

Response Under 37 C.F.R. § 41.37
Appellant's Reply Brief
Application No. 08/928,272
Paper Dated: March 27, 2012
In Reply to USPTO Correspondence of February 2, 2012
Attorney Docket No. 3896-092985 (P-3818)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 08/928,272 Confirmation No. 9434
Appellant : MICHAEL ISKRA
Filed : September 12, 1997
Title : COLLECTION CONTAINER ASSEMBLY
Group Art Unit : 3771
Examiner : Kristen Clarette Matter

Mail Stop Amendment
Commissioner for Patents
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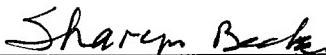
REPLY BRIEF TO EXAMINER'S ANSWER PURSUANT TO 37 C.F.R. § 41.41(a)

Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed February 2, 2012.

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office on March 27, 2012.

03/27/2012
Date


Signature

Sharyn Beck

Typed Name of Person Signing Certificate

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ARGUMENT IN REPLY

This Reply Brief is in response to the Examiner's Answer of February 2, 2012. Claims 1 and 5-9 are pending in this application and are the subject of this Appeal.

In the Examiner's Answer, the rejection of claims 1, 6, and 9 for obviousness based on Figures 1 and 2 of the subject application, referred to as Applicant's Admitted Prior Art ("the State of the Art"), in view of United States Patent No. 4,358,425 to Finney ("Finney") and the rejection of claims 5, 7, and 8 for obviousness based on the State of the Art and Finney and further in view of United States Patent No. 5,458,854 to Burns ("Burns") have been maintained.

The *Response to Argument* section of the Examiner's Answer begins at page 8. In the Response section, the Examiner contends that changing the shape of a prior art flat-bottomed collection tube from a flat bottom to a semi-spherical bottom does not provide any critical advantage or change in function of the tube. Appellant respectfully disagrees with this conclusion and the Examiner's statements concerning it.

The Examiner contends that the change in shape is not critical because both shapes previously allowed tubes to be used with standard clinical equipment. However, as explained in Appellant's Brief, changing the shape of the bottom of the tube allows for a false-bottomed tube that is compatible with standard clinical equipment. Whether or not prior art false-bottomed tubes having a flat bottom could be used in centrifuges (like in the Burns patent) does not detract from the criticality of Appellant's invention. The semi-spherical bottom of the claimed false-bottom collection tube allows it to be compatible with standard clinical equipment specifically designed to handle standard-sized blood tube configurations having a rounded bottom, such as storage racks, chemical analyzers, and centrifuges. Flat-bottomed tubes, on the other hand, would not be compatible with this equipment in the same way that rounded or semi-spherical bottomed tubes are compatible.

The Examiner's position that this is not a critical change in function misses the point of the invention. Appellant is not attempting to claim every false-bottom tube that is used in clinical equipment. Rather, the invention is directed to a tube having a certain shape, which shape provides an important functional advantage over what was previously known. It is

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undisputed that, prior to the claimed invention, false-bottom collection tubes did not have a semi-spherical bottom, and instead had a flat bottom. It is also undisputed that the claimed design facilitates compatibility between a false-bottomed collection container and standard clinical equipment and instrumentation. This represents a critical change in the function of the false-bottom container because it allows the false-bottom container to be more easily used by phlebotomists and other medical technicians during collection, storage, and analysis of a sample, and, in addition, this use is in a different manner in the sense that the claimed container can be used with standard equipment specifically designed for use with standard-sized blood containers having a rounded bottom.

Thus, the rounded bottom of the claimed collection container represents a critical advantage over the prior art in that it allows for a false-bottom collection tube that is compatible with standard clinical equipment in the manner in which that equipment was designed to be used.

Additionally, in the *Response to Argument* section, the Examiner asserts that “common sense” and the supposed ease of purchasing a false-bottom collection tube having a rounded bottom further suggest that the invention is obvious. However, neither of these was advanced as a basis for rejection in the final Office Action, nor is either supported by any evidence or citation to prior art. If the Examiner has evidence that the claimed semi-spherical false bottom tube was easily available for purchase prior to Appellant’s invention, then such evidence should be presented as the basis for rejection. Moreover, these arguments are belied by the prior art of record, such as Burns, which clearly discusses micro-centrifuges for use with false-bottom collection tubes having a flat bottom without any mention of semi-spherical or rounded bottom tubes. The availability of false-bottom tubes having a flat bottom that can be used with a micro-centrifuge at the time of the invention undercut the arguments that one skilled in the art would recognize a need for the subject invention or that it would be common sense to develop the claimed tube.

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CONCLUSION

Therefore, for the reasons set forth above and in Appellant's Appeal Brief, Appellant respectfully submits that claims 1 and 5-9 are patentable over the cited art and are in condition for allowance. Reversal of all of the Examiner's rejections and allowance of these claims are respectfully requested.

Respectfully submitted,
THE WEBB LAW FIRM

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